JAMES T. BROWN

IBLA 79-496 Decided March 27, 1980

Appeal from decision of California State Office, Bureau of Land Management, cancelling occupancy lease CA 3559 for failure to pay additional rental.

Vacated and remanded.

1. Appeals -- Rules of Practice: Appeals: Effect of

When an appeal is properly filed with the Board of Land Appeals from a decision made by an official of the Bureau of Land Management, that official loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over the case is restored by Board action disposing of the appeal.

2. Appraisals -- Federal Land Policy and Management Act of 1976: Generally -- Federal Land Policy and Management Act of 1976: Leases

Where BLM purportedly has appraised the property on which appellant allegedly has an occupancy lease issued pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732 (1976), and appellant submits evidence which raises a question as to whether the correct property was appraised, supported by a statement from an independent real estate appraiser, and presents other data which challenges the validity of the appraisal, the State Office decision will be vacated and the case remanded to BLM for consideration of whether a new appraisal is warranted.

APPEARANCES: James T. Brown, Jack Garcia, pro sese.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

James T. Brown appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated June 4, 1979, cancelling his occupancy lease filed pursuant to the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, 43 U.S.C. § 1732 (1976), for failure to pay additional rental.

By order of January 12, 1951, the land in question, consisting of 2.5 acres located in the SW 1/4 NE 1/4 NW 1/4 NE 1/4, T. 30 S., R. 33 E., Mount Diablo meridian, was classified for lease and sale, for homesites only, under the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. § 682(a) (1970), repealed by section 702, Federal Land Policy and Management Act of 1976, 90 Stat. 2787 (1976).

Appellant and his wife filed a small tract lease application on February 27, 1976, for the property in question on which a corral and part of their barn are located. On October 4, 1976, BLM sent appellant and Mrs. Brown a letter stating that the lease would be issued for a 5-year period effective June 10, 1974. The lease, according to BLM, would be subject to the following additional lease terms:

> 14. No further development of the land will be allowed.
>
> 15. An appraisal of the fair market value of the land will be made. Upon completion of the appraisal report, the lessee will be required to pay the difference between the advance rental payment deposited in this office on April 27, 1976, in the amount of $262, and the new appraisal figure.

In this letter BLM noted that Mrs. Brown had not signed the application forms and that BLM was returning the forms to her for signature.

By letter of October 11, 1978, BLM informed appellant that his lease was issued for a 5-year period beginning June 10, 1974, through June 9, 1979, under section 302, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732 (1976), rather than the Small Tract Act, supra, which was repealed by section 702 of FLPMA, supra.

On November 17, 1978, appellant told BLM that he had sold his property to Jack and Gloria Garcia on November 30, 1977, and inquired as to assigning the lease to them.

The appraisal of the property dated October 25, 1978, noted the following:

The parcel in question is located in the Caliente Canyon area of central Kern County in southern California. As the population of Los Angeles and its immediate environs increases, demand for land on the fringe of the urban area also increases. In 1978 flood waters from Caliente Creek did extensive damage to roads crossing the creek. Local realtors say that the present market sees the unrepaired damage of this flood and local selling prices are affected. The market data approach was used to determine the value of the property. That is, the value of the land is estimated by comparing it with parcels which have recently sold in order to estimate, by a process of substitution, the indicated value of the subject property under like conditions. Since comparable properties or conditions rarely exist, it is necessary for the appraiser to make adjustments reflecting these differences. The appraiser compared the property with five sales in the vicinity on the basis of the following factors: terms or cash, time, location, character of topography, access, water, and size. The appraiser redescribed the subject land in terms of the above comparison elements as follows:

1. The land is appraised as if for a cash sale or on the terms most common in the market. There is no difference in these amounts.

2. The land is appraised as of October 25, 1978, the most recent date of inspection.

3. The land is part of the community of Lorraine.

4. The land is flat to gently sloping. Construction was not difficult.

5. The land is adjacent to the paved county road. There is no creek crossing.

6. The land has a spring.

7. The parcel contains 2.5 acres.

The appraisal report estimated the fair market value of the property at $14,000 based on an annual appreciation rate of 4.9 percent. The corresponding rental was set at $1,260.

A memorandum dated October 29, 1979, showed that the appraiser determined the value of the parcel on June 10, 1974, the beginning of the lease period, by taking $14,000, the appraised value of the property as of October 25, 1978, and decreasing it by an annual appreciation rate of 4.9 percent per year, compounded, to arrive at a 1974 value of $11,450 with a rental value of $801.50. A handwritten notation on this memo shows BLM's intention to assess a rental charge of

$801.50 for the 5-year period of the primary term, expiring in June 1979, and $1,260 per annum for the subsequent 5-year period.

By letter of January 30, 1979, BLM informed appellant that the appraisal report had been completed as required by additional lease term 15 and that the rental had been determined to be $801.50 per year. BLM requested that appellant submit the difference between the previous rental payments and the new rental, or $2,695, within 30 days of receipt of the letter. Appellant's attorney responded to this letter on February 19, 1979, asserting that since "additional lease term 15" was not attached to the lease at the time appellant signed it, he is not bound by its terms. Jack and Gloria Garcia filed a protest to the appraisal on March 1, 1979.

On April 4, 1979, BLM responded to the Garcias' comments on the appraisal and suggested that perhaps the issue could be resolved by an independent third-party appraisal under the standard rules for arbitration. BLM also responded to appellant's attorney by letter of April 16, 1979, in which BLM explained that it agreed that "additional lease term 15" was not attached to the lease when the lease was signed by appellant; that the form signed by appellant on February 25, 1976, was an application; that the applicant completed all items on the lease except Item 3, listing the rental, which was completed by BLM at the time of issuance of the lease and the lease was approved on the reverse side of the form; that appellant was informed of the additional lease terms which would become part of the lease when issued by letter of October 4, 1976, prior to the issuance of the lease; and that appellant was fully informed as to the requirements for additional rental upon completion of the appraisal report prior to the issuance of the lease.

BLM notified appellant by decision of April 19, 1979, that his lease would be cancelled if the additional rental was not received by BLM within 30 days from the date of receipt of the decision.

The Garcias submitted another letter dated April 22, 1979, which again challenged the appraisal. BLM replied that the information was not sufficient to warrant change in the appraisal report.

BLM issued a decision dated June 4, 1979, cancelling appellant's lease for failure to pay the additional rental. Appellant filed his notice of appeal with BLM on June 27, 1979, which presented the following as reasons for appeal:

> Standard appraisal procedures [sic] were not followed in that the corners of the leasehold were not identified by a survey.
>
> The leasehold and the appraisal are not on the same property.

> The assumption that this property is adjacent to B.L.M. land for access to and from the property, when it may be landlocked bringing the value next to nothing.
>
> It is questionable that the appraiser saw the lease property in that his statement that there was a spring on this property when in fact there is none. If he can walk the area and show me the spring, I will be glad to pay your assessment figure, and I will not limit this to the lease property but to the N 1/2 of the N 1/2 of the NE 1/4 of Sect.22, T.30S, R33E, of M.D.B.&M, USGS. . . .

Appellant filed additional reasons for appeal with the Board on July 26, 1979. He contends that he sent the lease form to BLM on June 10, 1974, and did not hear from BLM until February 1976 when the lease was returned to him for signature with the addition of Appendix A; that BLM waited until 1978 to appraise the property, thereby letting inflation attain the maximum and extending it beyond the signing to 1974; that retroactive setting of lease rentals is unfair.

Appellant alleges certain discrepancies in the appraisal report concerning the location of the property. He notes that the land was identified in the field on October 28, 1978, with reference to the improvements thereon and the Lorraine 7.5 Quadrangle, Geological Survey; that the quadrangle reproduction attached to the appraisal does not show that it touches the county road; that the legal description on the lease (SW 1/4 NE 1/4 NW 1/4 NE 1/4) and the appraisal report (SE 1/4 NE 1/4 NW 1/4 NE 1/4) do not describe the same property; that according to the appraisal, "The parcel on which the leasehold exists is a large parcel of public land, containing several hundred acres;" that according to a letter from Herbert E. Roberts, Kern County Assessor, all boundaries of the leasehold are owned by three people.

Appellant listed these further reasons for disagreeing with the appraisal report:

> 1) The statement, "There is no difference for cash or terms" is wrong. All people who buy in this area buy with small cash down and terms. Most people do not have cash for vacant land fifty miles from town.
>
> 2) The appraisal is of the most recent date of inspection. With the wrong description (legal), The inspection is invalid due to the fact that he did not see the subject property. You cannot say the same thing about any two parcels side by side as there are different factors attending each.

3) The land is part of the community of Lorraine. As the quadrangle map identifies all land in this area as Lorraine, The smaller community is called Twin Oaks.

4) Construction was not difficult. There is no construction except part of the barn may be on the property. The land is vacant.

5) The land is adjacent to the paved county road. There is no creek crossing. Absolutely right, but by Kern County Assessor's record -- No Legal Access. . .

6) The land has a spring. This is the statement that tells me that Mr. Brium never saw the subject property. I have a survey plat of an adjacent property showing a portion of the N 1/2 of the N 1/2 of the NE 1/2 of Sec. 22, T30S.,R 33E, M.D.M.&M. I have walked all over this area and I would like someone from the B.L.M. or the Department of the Interior to show me this spring that He saw.

7) The parcel contains 2.5 Acres. This we agree on because the legal description covers this amont [sic] of area. What we don't know is where is the corners and what is on this parcel. Nobody in the bureau or us knows the exact location.

Attached to appellant's statement of reasons was a letter from James A. Milner, real estate appraiser, in which he stated:

From the legal description on the appraisal report it is evident that the appraiser visited and reported on the wrong property. He evidently saw and reported upon the 2-1/2 acres adjoining on the easterly line. Also, from the description of the comparables used in the report, it is apparent that values from one parcel to another vary a great deal depending on water availability, terrain and ingress and egress to roads. Inasmuch as the appraiser may not have seen the subject land there is reason to believe that the market value figure as given may be too high by a considerable amount.

Jack Garcia also filed an appeal in which he gave his reasons as to why the appraisal was in error. 1/

1/ The file in this case does not show that the Garcias ever filed a formal application for assignment of the lease in question with BLM. Therefore, James and Sally Brown are lessees of record and responsible for paying the rental due.

[1] At the outset we note that BLM issued a decision on April 19, 1979, in which it stated that appellant's lease would be cancelled if the additional rental was not received by BLM within 30 days from the date of receipt of the decision. On May 18, 1979, appellant filed a timely notice of appeal from BLM's decision. BLM issued its decision dated June 4, 1979, cancelling appellant's lease for failure to pay the additional rental. It is well established that when an appeal from a decision of a BLM official is properly filed, that official loses jurisdiction over the case and has no further authority to take any action on the case until jurisdiction over it is restored by the Board action disposing of the appeal. State of Alaska, 46 IBLA 56 (1980). Any adjudicative action taken by BLM relating to the subject matter of the appeal after a timely appeal is filed is a nullity since BLM will have acted without jurisdiction. State of Alaska, supra. Warren D. Elmore, 42 IBLA 91 (1979); Utah Power & Light Co., 14 IBLA 372 (1974). See Audrey I. Cutting, 66 I.D. 348, 351-52 (1959). Therefore, BLM's decision of June 4, 1979, which purports to cancel appellant's lease is ineffective.

[2] Appellant has raised several pertinent questions which challenge the validity of BLM's appraisal. It is of primary importance that the property which appellant leases is the property which was appraised.

In light of the fact that there is doubt that the land in issue was appraised, supported by the statement of an independent real estate appraiser, we hereby vacate the decision of the State Office and remand this case to BLM to determine the proper location of the land. If BLM finds that the wrong property has been appraised, then a new appraisal should be made and another decision issued embodying the new findings of fair market value. Cf. Junction Oil Company, Inc., 21 IBLA 78 (1975). We also ask BLM to consider appellant's other arguments relating to the appraisal and to decide whether they warrant a change in the appraisal. In the event that BLM determines that the right property was appraised and that appellant's arguments do not necessitate a new appraisal, we direct BLM to issue a new decision responding to appellant's contentions to this Board in order that we may have all the facts before us in deciding whether the appraisal should be sustained.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the

decision below is vacated and the case remanded for appropriate action consistent with this decision.

Anne Poindexter Lewis
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Edward W. Stuebing
Administrative Judge